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22 UNITED STATES BANKRUPTCY COURT  
23 NORTHERN DISTRICT OF CALIFORNIA  
24 SAN JOSE DIVISION

25  
26 In re  
27 CEDAR FUNDING, INC., a California  
28 corporation, CEDAR FUNDING  
MORTGAGE FUND, a California limited  
liability company,  
Debtors.

29 Chapter 11 Cases

30 Case. No. 08-52709 and 08-53670  
(Substantively Consolidated)

31 **JOINT CHAPTER 11 PLAN OF  
32 LIQUIDATION PROPOSED BY  
33 R. TODD NEILSON, CHAPTER 11  
34 TRUSTEE, AND THE OFFICIAL  
35 COMMITTEE OF UNSECURED  
36 CREDITORS DATED DECEMBER 21,  
37 2010, AS AMENDED FEBRUARY 14,  
38 2011**

39 Plan Confirmation Hearing:

40 Date: February 17, 2011

41 Time: 11:00 a.m.

42 Dept.: Courtroom 3070  
280 S. First Street  
43 San Jose, CA 95113

44 Judge: Hon. Charles Novack

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## **PRELIMINARY STATEMENT**

This joint chapter 11 plan of liquidation is proposed by R. Todd Neilson, chapter 11 trustee (the “Trustee”) for the bankruptcy estates of Cedar Funding, Inc., a California corporation (“Cedar Funding”), and Cedar Funding Mortgage Fund, LLC, a California limited liability company (the “Fund”), debtors in the substantively consolidated Chapter 11 Cases (collectively, the “Debtors”) and the Official Committee of Unsecured Creditors (the “Committee” and together with the Trustee, the “Proponents”).

Since his appointment on June 17, 2008, the Trustee has been engaged in the process of sorting out and recovering the assets of the bankruptcy estate, investigating potential claims against David Nilsen and other third parties, and administering the mortgage loan portfolio that constitutes the Debtors' primary asset. The goal of this process has been to liquidate the assets of the estate and to formulate a proposal to distribute the proceeds in as equitable a manner as possible to all creditors. This Plan is the result of that process.

Through his investigation, the Trustee has determined that from May 2004 until the Petition Date, Cedar Funding and the Fund were operated as a Ponzi scheme. The consequence of this determination is that there is a well-developed set of rules that are applied by Bankruptcy Courts in Ponzi scheme cases that do not apply in other bankruptcy cases. Payments made while a business is being operated as a Ponzi enterprise are presumed to be fraudulent transfers, and such transfers may be avoided by the Trustee and recovered for the benefit of all creditors. The foregoing principle is applicable to the interest payments paid by Cedar Funding to investors in fractionalized interests in mortgage loans, and to interest payments made to investors in the Fund. Such interest payments are presumed fraudulent because the Trustee's forensic analysis shows that the money used to pay interest to investors came from new money invested instead of from the performance of the mortgage loans (i.e., payments by the borrowers). In fact, substantially all of the mortgage loans in the portfolio were nonperforming.

## **Proposed Allowance of Claims**

The vast majority of the Claims filed in the Bankruptcy Cases are claims of investors. Very few claims arise from trade debt, taxes or employment obligations, and the amount of such claims will not have a material impact on distributions under the Plan. Because most of the Creditors are investors, all of whom have been harmed by the operation of the Ponzi scheme, the Plan Proponents have structured the Plan to provide for ratable distribution to Creditors.

Based on the legal principles described in the paragraph above, the Plan proposes that the Allowed Amount of Claims of investor Creditors will be initially determined based on the amount of principal invested by each creditor, excluding any interest to which the creditor contends he or she may be entitled. The reason for this is because the interest payments promised by the Debtors did not come from a legitimate source; the payments came from money invested by new investors. In order for all similarly situated creditors to be placed on equal footing, interest must be disregarded.

This leads to the second aspect of the claim allowance proposed under the Plan for investor Claims. Some investors of Cedar Funding and/or the Fund received monthly interest payments, while other investors “reinvested” their interest. The Plan provides a mechanism designed to equalize the treatment of investor Creditors: It provides that if an investor received interest payments from the Debtors during the period of Ponzi operation (May 2004 – May 2008), the total amount of all payments received by the investor will be deducted from the principal sum invested by that investor to arrive at the Allowed Amount of the Claim. An illustration follows:

	<b>Principal Sum Invested</b>	<b>Payments Received Between May 2004-May 2008</b>	<b>Allowed Amount of Claim</b>
Investor A	\$100,000	\$25,000	\$75,000
Investor B	\$100,000	\$0.00	\$100,000

## **Proposed Distributions**

Through a ruling of the Bankruptcy Court which occurred earlier in the case, the assets and liabilities of Cedar Funding and the Fund have been substantively consolidated. The effect of this ruling is all assets of either Debtor will be combined into one source of distributions under the Plan, and Creditors will receive similar treatment under the Plan whether they hold Claims against Cedar Funding or against the Fund.

The Plan contemplates that an initial distribution to holders of Allowed Claims will be made on the Initial Distribution Date, which will be no later than sixty (60) days after the Effective Date, subject to order of the Bankruptcy Court authorizing a later date. Further distributions will be made on a periodic basis until all Net Available Cash has been distributed.

No distributions will be made on account of a Claim unless and until the Claim has been Allowed. Certain Claims will be treated as Disputed Claims, and the holder of such Disputed Claims will not be entitled to receive distributions, although the Disputed Claims will be reserved for under the Plan. In particular, all Claims which are in a face amount that is greater than the amount of the Claim as calculated by the Trustee under the formula set forth above will be objected to and treated as Disputed Claims.

In addition, all investors who have filed an appeal from the Bankruptcy Court's orders avoiding their fractionalized interests in notes and deeds of trust originated by Cedar Funding will not be entitled to any distributions under the Plan. Instead, the recovery of those investors will be limited to the portion of the Sale Proceeds representing their fractionalized ownership interest arising from the disposition of the real property in which such investor asserts an interest, and even then, only if the Bankruptcy Court issues an order staying the disbursement of the proceeds by the Plan Administrator during the pendency of the appeal. In connection with any request for a stay pending appeal, the Trustee or Plan Administrator, as applicable, will request the Bankruptcy Court to require the appellant to post a bond or other security to protect the rights of all unsecured creditors. If no stay

1 pending appeal is issued, then the Plan Administrator may use the sale proceeds that would  
2 otherwise be due to the investor to fund distributions under the Plan.

3 **Appointment of a Plan Administrator**

4 The Plan provides for the administration of Estate Assets after confirmation by  
5 a manager proposed by the Committee (“Plan Administrator”), who will replace the Trustee  
6 as the responsible party for the Liquidating Debtors. Confirmation of the Plan shall  
7 constitute and confirm the appointment of the Plan Administrator, including responsibility  
8 and authority to (a) exercise the rights, power and authority of the Liquidating Debtors, under  
9 the applicable provisions of the Plan and bankruptcy and non-bankruptcy law, and (b) retain  
10 post-confirmation professionals to represent the Liquidating Debtors and to assist the Plan  
11 Administrator in performing and implementing the Plan, including without limitation  
12 retaining professionals originally engaged by the Trustee and the Committee, and (c)  
13 liquidate the remaining Estate Assets and close the Chapter 11 Cases.

14 **Funding of the Plan**

15 The Plan contemplates the liquidation of all Estate Assets for the benefit of the  
16 holders of Allowed Claims. The resulting funds, after payment of Plan Expenses, will be  
17 made available for distribution to holders of Allowed Claims in accordance with the terms of  
18 the Plan. The Plan Administrator’s operation of the Liquidating Debtors will be for the  
19 purpose of liquidating and monetizing Assets. The Assets consist primarily of Cash, Real  
20 Property Assets and the Retained Claims and Defenses. The Plan Administrator shall  
21 expeditiously seek to collect, liquidate, sell and or reduce to Cash all Assets; provided, that  
22 the Plan Administrator shall liquidate the Real Property Assets within a period of time  
23 reasonably calculated to achieve the maximum return given all factors he deems to be  
24 appropriate in his sole discretion, following consultation with the Post-Confirmation  
25 Committee, including, without limitation, market conditions, carrying costs and ownership  
26 risks.

27 As set forth in the Disclosure Statement, the Plan Proponents believe that the  
28 Plan will allow the holders of Unsecured Claims to receive a meaningful return on account of

1 their Allowed Claims against the Debtors, depending on the sales of Real Property Assets,  
2 the outcome of litigation and the allowance of Claims.

3 **The Plan Process**

4 With the Plan, Creditors will receive a Ballot for voting on the Plan, and a  
5 Disclosure Statement which provides information concerning the Debtors and the Plan. The  
6 Disclosure Statement includes a summary of the assets and liabilities of the Debtors, a  
7 summary of what Creditors will receive under the Plan, a discussion of certain alternatives to  
8 the Plan, and a summary of the procedures and voting requirements necessary for  
9 confirmation of the Plan. You should thoroughly review both the Plan and Disclosure  
10 Statement before deciding whether you will accept or reject the Plan.

11 As more fully described in the Disclosure Statement, the Plan must be  
12 approved by the requisite number of Creditors and the Bankruptcy Court must find that it  
13 meets the applicable legal standards before the Plan can be confirmed. If the Plan is not  
14 confirmed, The Bankruptcy Court may order the Cases dismissed, or converted to liquidating  
15 cases under chapter 7 of the Bankruptcy Code, or the Trustee or other parties in interest may  
16 propose a different plan.

17 The Trustee and the Committee believe that the Plan provides the best  
18 mechanism available for maximizing returns to Creditors and urge Creditors to vote in favor  
19 of the Plan.

20 **ARTICLE I.**

21 **DEFINED TERMS**

22 **1.1 Defined Terms.**

23 As used in this Plan, the following terms (which appear in the Plan as  
24 capitalized terms) have the meanings set forth below:

25 “Administrative Claim” means any Claim for costs and expenses of administration  
26 allowed under the Bankruptcy Code, including: (a) the actual and necessary costs and  
27 expenses incurred after the Cedar Funding Petition Date of preserving and recovering the  
28

1 Debtors' estates, (b) compensation for legal and other professional services and  
2 reimbursement of expenses awarded to the Trustee, or professionals retained by the Trustee  
3 or Committee, under sections 330(a) or 331 of the Bankruptcy Code, (c) fees of the Trustee,  
4 (d) any post-Petition Date cost, indebtedness, or contractual obligation validly incurred or  
5 assumed by the Debtors in the ordinary course of their respective businesses, and (e) the  
6 United States Trustee's quarterly fees assessed against the Debtors' estates under 28 U.S.C.  
7 section 1930(a)(6).

8       “Administrative Claims Bar Date” shall mean the first Business Day that is thirty (30)  
9 days after the Effective Date pursuant to which Creditors must file a request for payment of  
10 any Administrative Claim that arose between the Cedar Funding Petition Date and the  
11 Effective Date, for which notice shall be provided in the Proponents' notice of entry of the  
12 Confirmation Order.

13       “Allowed” means with respect to any Claim or Interest: (a) a Claim or Interest that is  
14 not a Disputed Claim or Disputed Interest, and either (i) such Claim or Interest has not been  
15 scheduled by the Trustee as most recently amended as disputed, contingent or unliquidated as  
16 to amount as to which no timely proof of Claim or Interest has been filed by the applicable  
17 Bar Date; or (ii) with respect to which a proof of Claim or proof of Interest has been filed in  
18 a sum certain by the applicable Bar Date or has otherwise been deemed timely filed under  
19 applicable law; or (b) the Claim or Interest has been allowed by an order of the Bankruptcy  
20 Court; or (c) such Claim or Interest is expressly allowed under this Plan.

21       “Allowed Amount” means where a Claim or Interest is Allowed, the amount in which  
22 such Claim or Interest has been Allowed, as determined under this Plan, the Bankruptcy  
23 Code and the Bankruptcy Rules. No interest will be paid by the Estates on the Allowed  
24 Amount of any Claim, except as required by applicable law or as otherwise expressly  
25 provided in this Plan. For purposes of determining the Allowed Amount of an Allowed  
26 Claim or Allowed Interest, the Plan Administrator will deduct (a) an amount equal to the  
27 amount of any claim which either of the Debtors or the Estates may hold against the Holder  
28 thereof, to the extent such claim may be set off pursuant to section 553 of the Bankruptcy

1 Code or other applicable law, and (b) payments made on or after the Cedar Funding Petition  
2 Date on account of such Claim, except as otherwise provided in this Plan.

3       “Allowed Claim” means a Claim that has been Allowed.

4       “Allowed Interest” means an Interest that has been Allowed.

5       “Available Cash” means, with respect to the Initial Distribution and any subsequent  
6 distribution contemplated herein, the aggregate amount of all Cash held by the Estates  
7 immediately prior to such distribution. Available Cash shall include Sales Proceeds,  
8 provided, that if Subject Investors have obtained a Stay Pending Appeal then the Sales  
9 Proceeds shall remain in a segregated account pursuant to the Sale Procedures Order until  
10 entry of a Final Order in the Investor Avoidance Actions.

11       “Avoidance Action” means any and all claims and causes of action which any of the  
12 Debtors, the Trustee, the debtors-in-possession, the Estates, and Committee, or other  
13 appropriate party in interest has asserted or may assert under sections 502, 510, 542, 544,  
14 545, or 547 through 553 of the Bankruptcy Code or under similar state or federal statutes and  
15 common law.

16       “Bankruptcy Code” means Title 11 of the United States Code, §§ 101 et seq., as in  
17 effect as of the Cedar Funding Petition Date, as the same thereafter has been and may be  
18 amended.

19       “Bankruptcy Court” means the United States Bankruptcy Court for the Northern  
20 District of California or, in the event such court ceases to exercise jurisdiction over these  
21 Cases, such court or adjunct thereof which thereafter exercises jurisdiction over one of both  
22 of these Cases.

23       “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as in effect as  
24 of the Cedar Funding Petition Date, as the same thereafter have been and may be amended,  
25 and the Local Rules of the Bankruptcy Court.

26       “Bar Date” means, as applicable: (i) September 23, 2008, which was the date set by  
27 the Bankruptcy Court in the Cedar Funding Chapter 11 Case as the last day for filing a proof  
28 of Claim for a Claim that arose before the Cedar Funding Petition Date for non-governmental

1 units; (ii) the later of (a) November 24, 2008, which was the date set by the Bankruptcy  
2 Court in the Cedar Funding Chapter 11 Case as the last day for filing a Claim that arose  
3 before the Cedar Funding Petition Date for governmental units, or (b) the date which is 180  
4 days after the date on which any tax return for a prepetition period is filed or amended; (iii)  
5 November 18, 2008 which was the date set by the Bankruptcy Court in the Fund Chapter 11  
6 Case as the last day for filing a Claim for a Claim that arose before the Fund Petition Date  
7 for non-governmental units; and (iv) January 7, 2009, which was the date set by the  
8 Bankruptcy Court in the Fund Chapter 11 Case as the last day for filing a Claim that arose  
9 before the Fund Petition Date for governmental units.

10       “Business Day” means any day that is not a Saturday, a Sunday or other day on which  
11 banks are required or authorized by any federal, state or local law to be closed in the City of  
12 San Jose.

13       “Cases” means the Cedar Funding Chapter 11 Case and the Fund Chapter 11 Case,  
14 collectively.

15       “Cash” means cash and cash equivalents including, but not limited to, checks and  
16 other similar forms of payment or exchange.

17       “Cedar Funding” means Cedar Funding, Inc., a California corporation.

18       “Cedar Funding Chapter 11 Case” means the Chapter 11 case commenced by Cedar  
19 Funding in the Bankruptcy Court pending as Case No. 08-52709 CN.

20       “Cedar Funding Common Stock” means the common stock of Cedar Funding.

21       “Cedar Funding Petition Date” means May 26, 2008, which is the date on which  
22 Cedar Funding filed its voluntary petition pursuant to chapter 11 of the Bankruptcy Code.

23       “Claim” means any right to payment, whether or not such right is reduced to  
24 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
25 undisputed, legal, equitable, secured or unsecured; or any right to an equitable remedy for  
26 breach of performance, if such breach gives rise to a right to payment, whether or not such  
27 right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured,  
28 disputed, undisputed, secured or unsecured, known or unknown, including, without

1 limitation, any claim against either of the Debtors as defined in section 101(5) of the  
2 Bankruptcy Code.

3       “Class” means a category of holders of Claims or Interests as set forth in Article II of  
4 this Plan of Liquidation.

5       “Committee” means the Official Committee of Unsecured Creditors appointed  
6 pursuant to section 1102 of the Bankruptcy Code on or about November 13, 2008.

7       “Confirmation Date” means that date on which the Confirmation Order is entered by  
8 the Bankruptcy Court in its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

9       “Confirmation Order” means the order, as entered, of the Bankruptcy Court  
10 confirming this Plan of Liquidation pursuant to section 1129 of the Bankruptcy Code.

11       “Creditor” means any person or entity that holds a Claim.

12       “Debtors” means Cedar Funding and the Fund, the Debtors in the Chapter 11 Cases.

13       “Debt” shall mean liability on a Claim.

14       “Disallowed” means any Claim or Interest, or any portion thereof, that: (a) has been  
15 withdrawn, in whole or in part; or (b) is scheduled by the Trustee in his Schedules as most  
16 recently amended as contingent, disputed or unliquidated and the Holder of such Claim or  
17 Interest has not filed a proof of Claim or Interest by the applicable Bar Date; or (c) has been  
18 disallowed, in whole or in part, by an order of the Bankruptcy Court.

19       “Disallowed Claim” means a Claim, or any portion thereof, that is Disallowed.

20       “Disallowed Interest” means an Interest, or any portion thereof, that is Disallowed.

21       “Disclosure Statement” means the disclosure statement describing this, as approved  
22 by the Bankruptcy Court.

23       “Disputed Claim” means a Claim against the Debtor (a) that has been included in the  
24 Schedules as disputed, contingent, or unliquidated, or (b) as to which an objection has been  
25 filed and which objection is not the subject of a Final Order.

26       “Disputed Claims Amount” means the aggregate amount of Disputed Claims that are  
27 fixed, absolute, and neither contingent nor unliquidated. For purposes of calculating  
28 distributions of Net Available Cash under the Plan, the amount of each Disputed Claim shall

1 be based on the face amount of such Creditor's Disputed Claim (or the disputed portion  
2 thereof) as set forth in the Creditor's filed proof of Claim.

3       “Distribution Date” means the Initial Distribution Date or the date on which any  
4 subsequent distribution is made under this Plan.

5       “Effective Date” means the first Business Day on which each of the conditions  
6 specified in Article VI has been satisfied or duly waived.

7       “Estate Assets” means any and all real and personal property of the Debtors or any  
8 kind or nature, including, without limitation, all property of the Debtors' Estates under  
9 section 541 of the Bankruptcy Code.

10       “Estates” means the Debtors' bankruptcy estates.

11       “Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

12       “Final Distribution” means a final distribution of Net Available Cash that will occur  
13 within sixty (60) days after the later to occur of: (a) Entry of a Final Order resolving any and  
14 all objections to any Claims in Class 3; or (b) the reduction to Cash of all Estate Assets.

15       “Final Order” means an order, ruling, decree or judgment or other similar matter  
16 having the operation of effect thereof, issued and entered by the Bankruptcy Court or by any  
17 state or other federal court or other court of competent jurisdiction, which has not been  
18 reversed, vacated, stayed, modified or amended and as to which: (a) the time to appeal or  
19 petition for review, rehearing, certiorari, reargument or retrial has expired; or (b) any appeal  
20 or petition for review, rehearing, certiorari, reargument or retrial has been finally decided or  
21 dismissed.

22       “Fractionalized Interestholder Secured Claims” means any all Claims held by  
23 Creditors who assert security interests in or ownership of notes and deeds of trust, or any  
24 fractionalized interest therein, originated by Cedar Funding, and whose interests have not  
25 been avoided by a Final Order.

26       “Fund” means Cedar Funding Mortgage Fund, LLC, a California limited liability  
27 company.

1           “Fund Chapter 11 Case” means the Chapter 11 case commenced by the Fund in the  
2 Bankruptcy Court and consolidated with the Cedar Funding Chapter 11 Case by order of the  
3 Bankruptcy Court entered on April 30, 2009.

4           “Fund Petition Date” means July 11, 2008, the date the Trustee filed a voluntary  
5 petition pursuant to chapter 11 of the Bankruptcy Code on behalf of the Fund.

6           “Initial Distribution Date” means the first date after the Effective Date on which the  
7 Plan Administrator determines to make a distribution of Estate Assets to holders of Allowed  
8 Class 3 Claims, or to holders of Administrative Claims, Priority Claims, and Allowed Class 1  
9 and 4 Claims that are not Allowed on the Effective Date but are Allowed by the date of such  
10 distribution. The Initial Distribution Date will be no later than the first Business Day that is  
11 sixty (60) days after the Effective Date, unless the Plan Administrator obtains an order from  
12 the Bankruptcy Court authorizing the Initial Distribution Date to be a later date.

13           “Interests” shall mean the equity interests of Cedar Funding including, but not limited  
14 to, common stock and warrants, options, or other rights exercisable or convertible into such  
15 common stock and all legal, equitable and contractual rights resulting from being a holder of  
16 such equity interest.

17           “Investor Avoidance Actions” shall mean the following adversary proceedings filed  
18 by the Trustee in the Bankruptcy Court: *Neilson v. Aiken*, Adv. Proc. No. 08-05222, *Neilson*  
19 *v. Albright*, Adv. Proc. No. 09-05120, *Neilson v. Aguirre*, Adv. Proc. No. 09-05225 and  
20 *Neilson v. Dwyer*, Adv. Proc. No. 09-05260.

21           “Liquidating Debtors” means the Debtors as reorganized and reconstituted on an after  
22 the Effective Date.

23           “Liquidation Amount” means all Estate Assets remaining after (i) payment in full of  
24 Allowed Administrative Claims, all Allowed Priority Claims, and all Allowed Class 4  
25 Claims; (ii) payment in full of all fees owing to the Clerk of the Bankruptcy Court and fees  
26 owing to the U.S. Trustee; and (iii) payment in full of all Plan Expenses.

27           “Loan Payoffs” has the meaning used in the Sale Procedures Order, and includes Full  
28 Payment and Short Pays, as such terms are defined in the Sale Procedures Order.

1           “Net Available Cash” means the aggregate amount of Available Cash held by the  
2 Estates after the payment of (or appropriate reserve for) Allowed Administrative Claims,  
3 Allowed Priority Claims, Allowed Class 4 Claims, and net of amounts reserved for Disputed  
4 Claims and Plan Expenses.

5           “Plan” means this joint chapter 11 plan of liquidation and any exhibits and schedules  
6 hereto and any documents incorporated herein by reference, as the same may be from time to  
7 time amended or modified as and to the extent permitted herein or by the Bankruptcy Code.

8           “Plan Administrator” means Russell Burbank, whose curriculum vitae is set forth as  
9 **Exhibit A** hereto and who shall file a further statement setting forth his qualifications,  
10 including a disclosure of any potential conflicts of interest, pursuant to Bankruptcy Code §  
11 1129(a)(5)(A)(i) not less than ten (10) days prior to the last day to object to confirmation of  
12 the Plan.

13           “Plan Expenses” means all actual and necessary costs and expenses incurred after the  
14 Effective Date in connection with the administration of the Plan, including, but not limited  
15 to, (i) costs, expenses and legal fees related to the filing and prosecution of objections to  
16 Claims, (ii) costs, expenses and legal fees incurred to investigate, litigate, estimate and settle  
17 the Retained Claims and Defenses, including but not limited to attorneys’ fees, accounting  
18 fees, expert witness fees, consultants’ fees, and all costs relating to obtaining and distributing  
19 such recoveries, incurred by the Liquidating Debtors, (iii) the costs and expenses of  
20 administration of the Liquidating Debtors, including, without limitation, the fees and costs of  
21 the Plan Administrator; (iv) amounts necessary to compensate members of the Post-  
22 Confirmation Committee and the Professionals incurred after the Confirmation Date for  
23 services rendered at the request of the Plan Administrator; (v) all costs to manage, store,  
24 transport, transfer and destroy records, (vi) all fees payable pursuant to 28 U.S.C. § 1930,  
25 and (vii) tax liabilities for tax years ending after the Effective Date.

26           “Post-Confirmation Budget” means the budget for Plan Expenses the Plan  
27 Administrator projects on the Effective Date to be necessary and appropriate, in the exercise  
28 of his business judgment, to carry out the provisions of this Plan.

1           “Post-Confirmation Committee” means the three (3) member committee to be chosen  
2 by the Committee to consult with and advise the Plan Administrator.

3           “Priority Claim” means those Claims, if any, afforded priority under Bankruptcy  
4 Code Sections 507(a) and (b).

5           “Priority Employee Claims” means that portion of an Allowed Claim that is  
6 unsecured and is entitled to priority under section 507(a)(4) of the Bankruptcy Code.

7           “Priority Tax Claim” means an Allowed Claim entitled to priority against the Estates  
8 under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

9           “Professional” means a person or entity (a) employed in the Cases prior to the  
10 Confirmation Date, in accordance with Bankruptcy Code Sections 327, 328 or 1103; (b)  
11 employed by the Trustee or the Committee between the Confirmation Date and the Effective  
12 Date; or (c) employed by the Plan Administrator or the Post-Confirmation Committee after  
13 the Effective Date in accordance with the terms of this Plan.

14           “Professional Fees” means all amounts allowed and awarded by the Bankruptcy Court  
15 for compensation for services rendered and reimbursement of expenses incurred by  
16 Professionals pursuant to Bankruptcy Code §§ 330(a) and 503(b).

17           “Pro Rata Share” means, with respect to distributions on account of Allowed Claims,  
18 in the same ratio of an Allowed Claim in a particular Class to the aggregate of all Allowed  
19 Claims in that Class.

20           “Real Property Assets” shall mean all Estate Assets which constitute interests in real  
21 property under applicable non-bankruptcy law.

22           “Retained Claims and Defenses” means all actions, including Avoidance Actions,  
23 causes of action, suits, counterclaims, defenses, cross-claims, rights of offset, recoupment,  
24 subrogation, subordination, debts, accounts, covenants, contracts, controversies, agreements,  
25 promises, damages or judgments held by the Debtors or the Estates against any party whether  
26 or not pending on the Effective Date, not otherwise released or settled before the Effective  
27 Date.

1           “Sale Procedures Order” means the Order Approving Procedures for: (1) Real  
2   Property Sales and the Payment of Closing Costs and Reimbursements, Including Brokerage  
3   Commissions; (2) Loan Payoffs and Reconveyances; (3) Related Compromises; (4) the  
4   Making of Secured Advances; and (5) Loan Collection, Administration and Enforcement,  
5   Including Foreclosures, Forbearances, and Deeds in Lieu entered on October 23, 2009 in the  
6   docket of the Bankruptcy Court, a true and correct copy of which is attached hereto as

7           **Exhibit B.**

8           “Sales Proceeds” means all Cash and non-Cash net proceeds (after payment of all  
9   sale-related expenses provided for under the Sale Procedures Order) of the sales of Real  
10   Property Assets and Loan Payoffs, including without limitation all proceeds held by the  
11   Trustee or the Plan Administrator for the benefit of Subject Investors (as such term is defined  
12   in the Sale Procedures Order) pursuant to the Sale Procedures Order.

13           “Schedules” means the schedules of assets and liabilities, statements of financial  
14   affairs, and such other schedules filed in the Cases by the Chapter 11 Trustee.

15           “Secured Claim” means any Claim arising before the Cedar Funding Petition Date or  
16   Fund Petition Date, as applicable, that is: (a) secured in whole or in part, as of the applicable  
17   petition date, by a lien which is valid, perfected and enforceable under applicable law on  
18   property in which either of the Debtors or the Estates has an interest and is not subject to  
19   avoidance under the Bankruptcy Code or applicable nonbankruptcy law, or (b) subject to set-  
20   off under section 553 of the Bankruptcy Code; provided, however, with respect to both (a)  
21   and (b), only to the extent of the value of the holder’s interest in such Debtor’s or Estate’s  
22   interest in such property securing any such Claim or the amount subject to set-off, as the case  
23   may be, as determined under section 506(a) of the Bankruptcy Code.

24           “Stay Pending Appeal” means an order of the Bankruptcy Court, obtained pursuant to  
25   the procedures set forth in Article V (5.9) of this Plan, enjoining the Trustee or the Plan  
26   Administrator, as applicable, from transferring Sales Proceeds from the segregated account  
27   established under the Sale Procedures Order, or the Disputed Claims Reserve, as applicable.

“Trustee” is as defined in the Preliminary Statement to this Plan, the duly appointed trustee in the Cedar Funding Chapter 11 Case.

**“Trustee Fees”** means fees payable to the Trustee under sections 326, 330 and 331 of the Bankruptcy Code.

**“Unclaimed Property”** means any funds (together with any interest earned thereon) that are unclaimed on the sixtieth (60<sup>th</sup>) day following a Distribution Date. Unclaimed Property shall include (a) checks (and the funds reserved thereby) that have been returned as undeliverable without a proper forwarding address, (b) funds for checks that have not been honored within sixty (60) days after a Distribution Date, and (c) checks (and the funds reserved thereby) that were not mailed or delivered because of the absence of a proper address to which to mail or deliver such checks.

**“Unclassified Claim”** means a Claim of the type described in Article III of this Plan.

**“Unsecured Claim”** means any Claim that is not a Priority Claim, Administrative Claim or Secured Claim.

“U.S. Trustee” means the United States Trustee for the Northern District of California.

## ARTICLE II.

## CLASSIFICATION OF CLAIMS AND INTERESTS

## 2.1 Criterion of Class.

The following is a designation of Classes of Claims under the Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class. In the event of a dispute as to whether any Class of Claims is properly designated, the Bankruptcy court shall, after notice and hearing, determine such dispute pursuant to Bankruptcy Rule 3013.

1                   **2.2      Classes of Claims and Interests**

2                   All Claims and Interests are divided into the following Classes, which Classes  
3                   shall be mutually exclusive:

4                   2.2.1       **Class 1 Claims.** Class 1 consists of all Priority Claims other  
5                   than Priority Tax Claims.

6                   2.2.2       **Class 2 Claims.** Class 2 consists of all Fractionalized  
7                   Interestholder Secured Claims.

8                   2.2.3       **Class 3 Claims.** Class 3 consists of all Unsecured Claims other  
9                   than Class 1 and Class 4 Claims.

10                  2.2.4       **Class 4 Claims.** This Class consists of all Claims that are  
11                  either: (a) in an amount equal to or less than \$2,000.00; or (b) in an amount  
12                  greater than \$2,000.00, but for which the holder of such Claim elects to have such  
13                  Claim treated in its entirety as a Class 4 Claim in the amount of \$2,000.00 by so  
14                  indicating on the ballot submitted to vote such Claim.

15                  2.2.5       **Class 5 Interests.** Class 5 consists of all Interests in Cedar  
16                  Funding.

17                   **ARTICLE III.**

18                   **TREATMENT OF UNCLASSIFIED CLAIMS**

19                  **3.1      Administrative Claims.**

20                  Each Allowed Administrative Claim, unless the holder has agreed to a  
21                  different treatment, shall be paid in full by the Liquidating Debtors from Available Cash on  
22                  the latest of: (a) the Effective Date, or as soon thereafter as practicable; (b) such date as may  
23                  be fixed by the Bankruptcy Court; (c) the tenth (10<sup>th</sup>) Business Day after such Claim is  
24                  Allowed, or as soon thereafter as practicable; and (d) such date as the holder of such Claim  
25                  and the Plan Administrator may agree.

26                  **3.2      Claims for Professional Fees.**

27                  Each party seeking an award by the Bankruptcy Court for Professional Fees  
28                  must file its final application for allowance of compensation for services rendered and

1 reimbursement of expenses incurred through the Effective Date on or before the  
2 Administrative Claims Bar Date. If the Bankruptcy Court grants such an award, each such  
3 party will be paid in full by the Liquidating Debtors from Available Cash in such amounts as  
4 are allowed by the Bankruptcy Court as soon thereafter as practicable, provided that allowed  
5 Trustee Fees may be paid pro rata with distributions under the Plan so as not to exceed the  
6 limitation imposed by 11 U.S.C. § 326(a).

7                   **3.3 U.S. Trustee Fees.**

8                   Quarterly fees payable to the U.S. Trustee pursuant to 28 U.S.C. section  
9 1930(a)(6) shall be paid as such fees become due.

10                   **3.4 Priority Tax Claims.**

11                   Each Allowed Priority Tax Claim, unless the holder of such Claim has agreed  
12 to a different treatment, shall receive deferred Cash payments to the extent permitted by  
13 section 1129(a)(9) of the Bankruptcy Code with interest on the unpaid portion of such Claim  
14 at the rate established by applicable nonbankruptcy law as of the calendar month in which  
15 the Plan is confirmed, or at such rate as may be agreed upon between the Liquidating  
16 Debtors and the appropriate governmental unit; provided, that the Liquidating Debtors may  
17 prepay any or all such Claims without premium or penalty.

18                   **ARTICLE IV.**

19                   **TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

20                   **4.1 Priority Claims (Class 1).**

21                   Class 1 shall consist of Priority Claims. Class 1 Claims are unimpaired. Each  
22 Holder of a Class 1 Allowed Claim will receive, in full and final satisfaction of and in  
23 exchange for such Class 1 Allowed Claim, an amount equal to the Allowed Amount of such  
24 Class 1 Allowed Claim from Available Cash on or as soon thereafter as practicable after the  
25 later of (i) the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a Final  
26 Order determining or allowing such Claim.

27                   **4.2 Fractionalized Interestholder Secured Claims (Class 2).**

1                   Class 2 shall consist of Fractionalized Interestholder Secured Claims. All Class 2  
2 Claims are Disputed Claims. To the extent that any Fractionalized Interestholder Secured  
3 Claim is an Allowed Secured Claim, the holder(s) of such Allowed Fractionalized  
4 Interestholder Secured Claims are unimpaired and, therefore, not entitled to vote.

5                   **4.3    Unsecured Claims (Class 3).**

6                   Class 3 shall consist of Unsecured Claims. Class 3 Claims are impaired. All Class 3  
7 Claims are subject to the provisions for Allowance or Disallowance of Claims as set forth in  
8 this Plan or otherwise as set forth in the Bankruptcy Code or other applicable law. Each  
9 Holder of a Class 3 Allowed Claim will receive, in full and final satisfaction of and in  
10 exchange for such Class 3 Allowed Claim, Cash equal to the Claimant's Pro Rata share of  
11 the Liquidation Amount.

12                   **4.4    Convenience Class Claims (Class 4)**

13                   Class 4 shall consist of convenience Claims. Class 4 Claims are impaired. Each  
14 holder of a Class 4 Allowed Claim will receive, in full and final satisfaction of and in  
15 exchange for such Class 4 Allowed Claim, on or as soon thereafter as practicable after the  
16 later of (i) the Effective Date, or (ii) the date upon which the Bankruptcy Court enters a Final  
17 Order determining or allowing such Claim, Cash equal to 100% of the Allowed Amount of  
18 such Class 4 Allowed Claim.

19                   **4.5    Interests (Class 5).**

20                   Class 5 consists of all Interests in any of the Debtors. Holders of Allowed Class 5  
21 Interests will receive no distribution on account of their Allowed Class 5 Interests and all  
22 Interests will be cancelled in accordance with Article V (5.21).

23                   **4.6    Nonconsensual Confirmation**

24                   **4.6.1    Classes 1 through 4 Cramdown.**

25                   The Proponents hereby request confirmation of the Plan pursuant to section  
26 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not  
27 discriminate unfairly as to the holders of Class 1 through Class 4 Claims.

#### 4.6.2 Class 5 Cramdown.

The Proponents hereby request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not discriminate unfairly as to the holders of Class 5 Interests.

## ARTICLE V.

## **MEANS FOR IMPLEMENTATION OF THE PLAN**

The Plan shall be implemented on the Effective Date. In addition to the provisions set forth elsewhere in this Plan regarding the means of implementation, the following shall constitute the principal means for implementation of the Plan.

## **5.1 Revesting of Estate Assets.**

Upon the Effective Date, the Liquidating Debtors shall be vested with all right, title and interest in the Estate Assets, free and clear of all Claims and Liens, other than as provided for under this Plan.

## **5.2 Replacement of Trustee.**

Upon the Effective Date, the Trustee shall be relieved of his responsibilities pursuant to the order authorizing appointment. The Liquidating Debtors, through the Plan Administrator, shall be authorized to execute such other documents as are necessary and appropriate to carry out the provisions of the Plan, without the necessity of filing such documents with the Bankruptcy Court.

### **5.3 Dissolution of Committee.**

On the Effective Date, the Committee shall be dissolved and the members of the Committee shall be released and discharged from any further rights and duties in connection with the Cases, except with respect to any disputes over the amount, allowance or payment of Administrative Claims payable to the members of the Committee and any of its Professionals for services rendered prior to the Effective Date.

## **5.4 Management of Liquidating Debtors by Plan Administrator.**

16                   The Plan Administrator shall post a bond in favor of the Liquidating Debtors  
17                   in an appropriate amount as may be agreed from time to time by the Plan Administrator and  
18                   the Post-Confirmation Committee, in consultation with the U.S. Trustee, or as otherwise  
19                   ordered by the Bankruptcy Court.

1 Confirmation Date in preparation for a transfer of control, the Plan Administrator may be  
2 compensated Post-Confirmation up to 15 hours time.

3 The Post-Confirmation Committee may remove the Plan Administrator if it  
4 determines that such removal is in the best interests of creditors. Within ten (10) Business  
5 Days prior to the effective date of removal of the Plan Administrator, the Post-Confirmation  
6 Committee shall file with the Bankruptcy Court a notice of a proposed replacement Plan  
7 Administrator, together with a declaration of the proposed replacement Plan Administrator  
8 establishing that he is a “disinterested person” within the meaning of section 101(14) of the  
9 Bankruptcy Code. Upon the effective date of removal of the Plan Administrator as  
10 determined by the Post-Confirmation Committee, the new Plan Administrator shall assume  
11 the responsibilities of the Plan Administrator.

12 Upon completion of all duties necessary to administer the Estates in  
13 accordance with the terms of this Plan, the Plan Administrator shall file and set for hearing a  
14 final post-confirmation application seeking approval of all fees and expenses previously paid  
15 as compensation by the Liquidating Debtors after the Effective Date.

16 **5.5 Post-Confirmation Committee.**

17 On the Effective Date, a Post-Confirmation Committee consisting of three (3)  
18 members will be constituted and will continue until entry of the Final Decree. No Creditor  
19 will be qualified to serve on the Post-Confirmation Committee unless that Creditor holds an  
20 Allowed Claim. A member of the Post-Confirmation Committee may resign at any time. A  
21 member will be automatically removed upon the sale, transfer or assignment of the member’s  
22 Claim(s). If at any time there are fewer than two (2) members of the Post-Confirmation  
23 Committee, the U.S. Trustee may appoint additional members of the Post-Confirmation  
24 Committee.

25 The Post-Confirmation Committee may retain counsel, including counsel  
26 retained by the Committee, at the expense of the Estates. Any Professionals retained by the  
27 Committee with authority of the Bankruptcy Court may be retained by the Post-Confirmation  
28

1 Committee without further order of the Bankruptcy Court, provided that the Post-  
2 Confirmation Committee approves such retention in writing.

3 The Post-Confirmation Committee shall have all of the rights and obligations  
4 set forth in this Plan, including, without limitation, the authority to supervise, review and  
5 consult with the Plan Administrator as to the activities of the Plan Administrator and to  
6 remove and replace the Plan Administrator pursuant to the provisions of this Plan. Without  
7 limiting the generality of the foregoing, the Post-Confirmation Committee may: (a) review  
8 and approve any amendment to this Plan; (b) upon reasonable notice, meet with the Plan  
9 Administrator; (c) request financial information or other information relating to the  
10 implementation of this Plan from the Plan Administrator; and (d) upon the occurrence of any  
11 default under this Plan, move the Bankruptcy Court for appropriate relief. Moreover, upon  
12 consent of the Plan Administrator, or as otherwise ordered by the Bankruptcy Court, the  
13 Post-Confirmation Committee may take any action on behalf of the Estates that the Plan  
14 Administrator may take under the Plan.

15 Members of the Post-Confirmation Committee shall be compensated by the  
16 Estates for expenses in connection with serving on the Post-Confirmation Committee that  
17 would otherwise be compensable for members of a creditors' committee under section  
18 503(b)(3)(F) of the Bankruptcy Code.

19 **5.6 Limitations of Liability.**

20 The Plan Administrator, the Post-Confirmation Committee (including its  
21 members individually) and their attorneys, accountants, consultants, employees and agents,  
22 shall have no liability by reason of the discharge of their duties, except any such liability that  
23 results from an act or omission to the extent that such act or omission is determined by Final  
24 Order to have constituted gross negligence or willful misconduct. Notwithstanding the  
25 foregoing, nothing in this paragraph shall relieve a Professional employed by the Plan  
26 Administrator or the Post-Confirmation Committee from liability for negligence in the  
27 performance of his professional duties.

## **5.7 Continued Operation of the Liquidating Debtors.**

On and after the Effective Date, the Liquidating Debtors shall continue to engage in wind-down activities and may use, acquire, dispose of and/or abandon Estate Assets without supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules, except as set forth in this Plan. The Liquidating Debtors will not engage in the conduct of any trade or business, except to the limited extent necessary to accomplish the liquidation and distribution of Estate Assets.

## 5.8 Liquidation of Real Property Assets; Sale Procedures Order.

The Plan Administrator shall seek to sell or reduce to Cash the Real Property Assets in his sole discretion after consultation with the Post-Confirmation Committee. The Plan Administrator shall be entitled to use his business judgment to determine the method and timing of disposition of the Real Property Assets, with a view toward achieving the highest return reasonably feasible given all factors he deems to be appropriate in his sole discretion, including market conditions, carrying costs and risks of ownership; provided, that the Plan Administrator shall endeavor to liquidate all Real Property Assets within five (5) years after the Effective Date.

With respect to the disposition of Real Estate Assets, and notwithstanding any other provision of this Plan, the Plan Administrator shall comply with the procedures for notice and approval by the Bankruptcy Court set forth in the Sale Procedures Order.

## **5.9 Fractionalized Interestholder Stay Pending Appeal.**

The Plan Administrator shall deposit all Sales Proceeds in the Disputed Claim Reserve as Real Estate Assets are liquidated. If there are no pending appeals by holders of Fractionalized Interestholder Secured Claims with respect to the affected Real Property Assets, the Plan Administrator may transfer the Sales Proceeds to the Plan Fund. If any holder of a Fractionalized Interestholder Secured Claim has filed an appeal of a Bankruptcy Court order avoiding his or her interest in the affected Real Property Asset and such appeal is pending and has not been determined by Final Order or otherwise has been resolved, then the

1 Plan Administrator shall give sixty (60) days prior written notice of his intention to transfer  
2 the Sales Proceeds to the Plan Fund to any such holder.

3 In all cases in which the Plan Administrator has provided the written notice  
4 required in the foregoing paragraph, the appellant shall be required to serve the Plan  
5 Administrator within sixty (60) days of his or her receipt of the Plan Administrator's notice  
6 with a copy of an order of the Bankruptcy Court entered pursuant to Bankruptcy Rule 8005  
7 staying the release of the Sale Proceeds pending the disposition of the appeal, together with  
8 evidence reasonably satisfactory to the Plan Administrator that the appellant has complied  
9 with any requirements in the stay order for the filing of a bond or other security. If, after the  
10 sixtieth (60<sup>th</sup>) day following delivery of his notice, the Plan Administrator has not received  
11 the order and other documents, he shall transfer the Sales Proceeds to the Plan Fund. If the  
12 appellant has timely served the Plan Administrator with the order and other required  
13 documents, the Plan Administrator shall maintain in the Disputed Claims Reserve an amount  
14 equal to the portion of the Sales Proceeds which is equal to the fractionalized ownership  
15 interest of appellant in the Real Property Asset which has been sold or collected for the  
16 benefit of appellant until the stay expires or is terminated. Upon entry of a Final Order in an  
17 Investor Avoidance Action in favor of a holder of a Fractionalized Interestholder Secured  
18 Claim, the Plan Administrator shall disburse to the holder his or her percentage interest in the  
19 Sale Proceeds, in full satisfaction of the Fractionalized Interestholder Secured Claim, unless  
20 the affected Real Property Asset has not yet been liquidated, in which case the Plan  
21 Administrator will not be required to make any disbursement on the Fractionalized  
22 Interestholder Secured Claim until the affected Real Property Asset has been liquidated.

23 **5.10 Retained Claims and Defenses.**

24 On and after the Effective Date, pursuant to section 1123(b)(3) of the  
25 Bankruptcy Code, the Liquidating Debtors, acting through the Plan Administrator, shall  
26 retain and may enforce the Retained Claims and Defenses with all powers and authority of a  
27 debtor in possession or trustee under the Bankruptcy Code.

28

1                   5.10.1    Standing.

2                   To the extent any Retained Claims and Defenses are already pending on the  
3 Effective Date, the Plan Administrator, as successor to the Trustee, may continue prosecution  
4 of such Retained Claims and Defenses. Without limiting the generality of the foregoing, the  
5 Plan Administrator, acting on behalf of the Liquidating Debtors, shall accede to and become  
6 the holder of all rights pursuant to the attorney-client privilege, attorney work product and  
7 any other or similar doctrine of the Trustee. Any proceeds received from or on account of  
8 the Retained Claims and Defenses shall constitute Estate Assets and shall vest entirely in the  
9 Liquidating Debtors.

10                   5.10.2    Avoidance Actions

11                   On and after the Effective Date, the Liquidating Debtors, acting through the  
12 Plan Administrator, shall retain and may enforce the Avoidance Actions with all powers and  
13 authority of a debtor in possession or trustee under the Bankruptcy Code. To the extent any  
14 Avoidance Actions are already pending on the Effective Date, the Plan Administrator as  
15 successor to the Trustee, may continue the prosecution of such Avoidance Actions. Any  
16 proceeds received from or on account of the Avoidance Actions shall constitute Estate Assets  
17 and shall vest entirely in the Liquidating Debtors.

18                   5.10.3    Small Claims and Defenses

19                   Except as may be otherwise provided in this Plan, with respect to any of the  
20 following having a net value equal to or less than \$50,000.00: (a) Retained Claims and  
21 Defenses; or (b) any objections to Claims, the Plan Administrator, in consultation with the  
22 Post-Confirmation Committee, may investigate such claims, objections or defenses and may  
23 assert, settle or enforce any such claims, objections or defenses without supervision by the  
24 Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy  
25 Rules.

26                   5.10.4    Large Claims and Defenses

27                   With respect to any of the following having a net value over \$50,000.00: (a)  
28 Retained Claims and Defenses; or (b) any objections to Claims, the Plan Administrator shall

1 file and serve a motion and opportunity for hearing seeking Bankruptcy Court approval to  
2 settle or abandon any such claims, objections or defenses, as a condition to taking any action.

3                   **5.10.5      Bankruptcy Rule 2004**

4                   In the course of any ongoing investigations, the Plan Administrator shall have  
5 the right post-confirmation to utilize Bankruptcy Rule 2004 examinations.

6                   **5.11      Funding of the Plan.**

7                   This Plan will be funded with the Estate Assets, including the Cash, and the  
8 net recovery (after payment of all fees and expenses) from the pursuit of the Reserved  
9 Claims and Defenses and the proceeds thereof.

10                  **5.12      Establishment of Accounts by Plan Administrator.**

11                  On or as soon as practicable after the Effective Date, the Plan Administrator  
12 will establish the following accounts: (1) the “Plan Fund;” (2) the “Administrative Claims  
13 Reserve;” and (3) the “Disputed Claims Reserve.”

14                  The Plan Fund Account shall be funded by all Cash which is not deposited in  
15 the Administrative Claims Reserve or the Disputed Claims Reserve. The funds in the Plan  
16 Fund (minus Plan Expenses) shall be held for the benefit of holders of Claims in Classes 1, 3  
17 and 4, and shall be invested by the Plan Administrator in a manner consistent with the  
18 objectives of section 345(a) of the Bankruptcy Code. All duties and obligations associated  
19 with the maintenance of the Plan Fund Account, including without limitation, any fees, taxes,  
20 tax reporting or filings with any governmental authority, shall be the sole responsibility of  
21 the Plan Administrator.

22                  The Administrative Claim Reserve shall be funded for the purpose of holding  
23 the amounts of Administrative Claims (including amounts for Professional Fees) which have  
24 not become Allowed Claims, or if such Administrative Claims have been Allowed, have not  
25 yet been paid in full, and may be closed upon payment of all Allowed Administrative  
26 Claims.

27                  The Disputed Claims Reserve shall be funded with an amount established in  
28 accordance with Article V (5.17). The Disputed Claims Reserve may be funded in part by

1 transfer of funds held in the segregated account maintained by the Trustee pursuant to the  
2 terms of the Sale Procedures Order.

3                   **5.13 Cooperation.**

4                   Proponents shall cooperate with one another in connection with any matter  
5 related to the consummation or implementation of this Plan.

6                   **5.14 Payment of Plan Expenses.**

7                   All Plan Expenses may be paid by the Liquidating Debtors from Estate Assets.

8                   **5.15 Distribution Procedures.**

9                   **5.15.1 Distributions on Allowed Class 1 and Class 4 Claims.**

10                  On the later to occur of: (a) the Initial Distribution Date; or (b) the date a Class  
11 1 Claim or Class 4 Claim becomes an Allowed Claim, the Plan Administrator shall make a  
12 distribution to holders of Allowed Class 1 Claims and Allowed Class 4 Claims, in Cash, in  
13 an amount equal to 100% of the Allowed Claim.

14                  **5.15.2 Distributions on Allowed Class 3 Claims.**

15                  Distributions to holders of Allowed Claims in Class 3 shall be made in the  
16 following manner:

17                  **5.15.2.1 Initial Distribution.**

18                  On the Initial Distribution Date or as soon thereafter as practicable, the Plan  
19 Administrator shall make an initial pro rata distribution of Net Available Cash to holders of  
20 Allowed Claims in Class 3; provided, however, that the Plan Administrator will make such  
21 initial distribution only after the Plan Administrator (i) has made all payments then owing on  
22 account of Administrative Claims and to the holders of Allowed Priority Tax Claims,  
23 Allowed Claims in Classes 1 and 4, and (ii) has transferred the appropriate reserves to the  
24 Disputed Claims Reserve and Administrative Claims Reserve.

25                  **5.15.2.2 Further Distributions.**

26                  After the Initial Distribution, further distributions to holders of Allowed Class  
27 3 Claims shall be made as soon as practicable as determined by the business judgment of the  
28 Plan Administrator based upon the amount of funds to be distributed relative to the

1 administrative costs of making such a distribution. Because both the timing and amount of  
2 interim distributions to holders of Allowed Class 3 Claims is dependent on proceeds from the  
3 liquidation of Real Estate Assets and the prosecution of Retained Claims and Defenses, it  
4 would be imprudent to provide an estimate as to when distributions will be made under the  
5 Plan. To the extent not accomplished previously, the Plan Administrator shall promptly  
6 serve objections to Claims with the goal of filing and serving all objections no later than one  
7 hundred and eighty (180) days after the Effective Date, provided, however, that expiration of  
8 such period shall not bar later objections.

9                   No payments or distributions shall be made by the Liquidating Debtors on  
10 account of Disputed Claims unless and to the extent such Claims become Allowed Claims.  
11 Except as otherwise agreed by the holder of a particular Claim, or as provided in this Plan,  
12 all amounts to be paid by the Liquidating Debtors under the Plan shall be distributed in such  
13 amounts and at such times as may be reasonably prudent, in the form of interim distributions,  
14 with sufficient reserves established to satisfy the reserve requirements set forth in the Plan.  
15 Unless otherwise provided in this Plan, all distributions shall be: (i) in U.S. dollars by check;  
16 and (ii) delivered by first-class mail (or by other equivalent means as appropriate).

17                   **5.16   Treatment of Disputed Claims.**

18                   At such time as a Disputed Claim becomes an Allowed Claim, the previous  
19 distributions due on account of such Allowed Claim shall be released from the Disputed  
20 Claims Reserve and placed in the Plan Fund. Distributions on account of such Allowed  
21 Claims shall not be made immediately after Disputed Claims become Allowed Claims, but  
22 instead shall be made on the next interim distribution date set by the Plan Administrator.

23                   Any funds that have been reserved on account of a Disputed Claim that  
24 becomes an Allowed Claim which exceed the amount of such Allowed Claim shall be  
25 returned to the Plan Fund. Any funds reserved for Claims which are Disallowed shall be  
26 returned to the Plan Fund.

1                   **5.17 Calculation of Appropriate Reserves.**

2                   Except to the extent that the Plan Administrator and the holder of a Claim  
3 otherwise agree, or the Bankruptcy Court otherwise determines, in the event that a sufficient  
4 reserve is less than the full amount of the Disputed Claim, in determining the amount to be  
5 reserved for Disputed Claims, the appropriate reserve shall be based on pro rata calculations  
6 made as if all Disputed Claims were Allowed Claims. Notwithstanding the foregoing, the  
7 Plan Administrator is not required to provide any reserve for Claims that are asserted in an  
8 unliquidated amount.

9                   **5.18 Treatment of Unclaimed Property.**

10                  If a distribution to a holder of an Allowed Claim becomes Unclaimed  
11 Property, the Plan Administrator will make reasonable efforts to locate and contact the holder  
12 of the Allowed Claim, taking into account the size of the Allowed Claim. If, following such  
13 reasonable efforts, the Plan Administrator is unable to locate and/or contact the holder of an  
14 Allowed claim, the Plan Administrator will seek an order of the Bankruptcy Court  
15 determining that the holder of the Allowed Claim is not entitled to the distribution or any  
16 further distributions on account of the Allowed Claim, and directing return of such  
17 Unclaimed Property to the Plan Fund. In seeking this order, the Plan Administrator shall file  
18 a declaration describing the efforts undertaken to locate and/or contact the holder of the  
19 Allowed Claim.

20                  **5.19 De Minimis Distributions; Rounding of Distributions.**

21                  The Plan Administrator shall not make a distribution to the holder of an  
22 Allowed Claim if the amount of the distribution is less than \$10. All Cash not so distributed  
23 shall remain in the Plan Fund. The Plan Administrator may round all distributions to the  
24 nearest whole dollar amount. If there is a remainder of Net Available Cash after the Final  
25 Distribution that is insufficient for a distribution (because the amount of the distribution to  
26 each holder of an Allowed Claim would be less than \$10), and the Plan has been otherwise  
27 consummated, then the remainder shall be donated to a section 501(c)(3) charity of the Plan  
28 Administrator's choice.

## **5.20 Post-Confirmation Professional Fees.**

2 All fees and costs incurred by Professionals after Confirmation shall be paid in  
3 full without further review by, or order of, the Bankruptcy Court, provided that, all such  
4 professionals shall send copies of invoices for fees and costs incurred after the Confirmation  
5 Date to the Plan Administrator and the Post-Confirmation Committee. The Plan  
6 Administrator and Post-Confirmation Committee shall have five (5) days from receipt of  
7 such invoice to notify the affected Professional of an objection, which objection, if it is not  
8 resolved by agreement of the parties, shall be subject to an order of the Bankruptcy Court.  
9 The Plan Administrator (a) is expressly authorized to employ professionals as required for an  
10 efficient administration of the Estates, including but not limited to, accountants, attorneys  
11 and real estate advisors, and (b) may retain Professionals previously employed by the Trustee  
12 or Committee in the Cases.

## **5.21 Repeal of Bylaws; Replacement of Fund Manager.**

## **5.22 Estimation of Claims.**

## ARTICLE VI.

## **CONDITIONS PRECEDENT**

## **6.1 Conditions to Confirmation.**

4 Confirmation of this Plan is conditioned upon entry of an order confirming the  
5 Plan which shall, among other things: (1) decree that the Plan and the Confirmation Order  
6 shall supersede all Bankruptcy Court orders entered prior to the Confirmation Order that are  
7 inconsistent therewith; (2) authorize the implementation of the Plan in accordance with its  
8 terms; (3) authorize the Plan Administrator, on the Effective Date or as soon thereafter as  
9 practicable, to deposit in the Plan Fund or Administrative Claims Reserve, as needed, all  
10 Sales Proceeds, unless the holder(s) of a Fractionalized Interestholder Secured Claim has  
11 first obtained a stay pending appeal, and in such event the Plan Administrator shall deposit in  
12 the Disputed Claims Reserve an amount equal to the percentage of the Sales Proceeds which  
13 is equal to the percentage ownership in the note and deed of trust which is the subject of the  
14 holder(s)' appeal and deposit the balance of the Sales Proceeds in the Plan Fund or  
15 Administrative Claims Reserve, if needed; (4) contain findings supported by evidence  
16 introduced at the confirmation hearing that the Plan is proposed in good faith, and that all  
17 actions contemplated by the Plan are necessary to implement the restructuring contemplated  
18 by the Plan; (5) issue the injunction set forth in the Plan; (6) decree that on the Effective  
19 Date, the revesting of assets in the Liquidating Debtors contemplated by the Plan is or will be  
20 legal, valid and enforceable, and that such assets will vest free and clear of all liens, Claims,  
21 and Interests except as provided under the Plan; and (7) confirm the Plan and authorize  
22 implementation of the Plan in accordance with its terms. If any of the foregoing conditions  
23 is not met, the Proponents may, at their option, withdraw this Plan and, if withdrawn, this  
24 Plan shall be of no further force or effect.

## 6.2 Conditions to Effective Date.

26 At any time after the Confirmation Order is entered (and provided no stay is  
27 then in effect), the Proponents shall have the power and authority to cause the Plan to  
28 become effective, and may cause the Plan to become effective notwithstanding that all of the

conditions to confirmations set forth in section 6.1, above, have not occurred.

## ARTICLE VII.

## **EFFECTS OF CONFIRMATION**

## **7.1 Binding Effect of Plan.**

Except as provided in this Plan or in the Confirmation Order, on the Effective Date the Plan shall be binding on all holders of Claims and Interests existing as of the date of Confirmation, whether or not such holder has filed a Claim or Interest in the Cases, whether or not such Claim is an Allowed Claim, whether or not such Interest is allowed, whether or not such Claim or Interest is impaired, and whether or not such holder has voted to accept the Plan. No holder of a Claim or Interest will have any right of action against the Debtors or Trustee except as set forth in the Plan. All Claims and Debts shall be as fixed and adjusted pursuant to this Plan.

## 7.2 Revesting of Property Free and Clear.

Upon the Effective Date, title to all Estate Assets shall vest in the Liquidating Debtors for the purposes contemplated under the Plan. All Unsecured Claims against the Debtors or the Estates shall be of no further force and effect except with respect to the rights of holders of Allowed Claims to received payments or distributions as set forth herein. Following the Effective Date, the Liquidating Debtors may use, acquire or dispose of any such property free of any restrictions imposed by the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules and without further approval of the Bankruptcy Court or notice to creditors, except as may otherwise be required under this Plan or the Confirmation Order. Except as otherwise expressly provided in the Plan or Confirmation Order, all rights or causes of action are hereby preserved and retained for enforcement solely and exclusively by and at the discretion of the Liquidating Debtors.

### 7.3 Injunction.

On the Effective Date, all holders of Claims against or Interests in the Debtors or the Estates that arose prior to the Effective Date are permanently enjoined from taking

1 legal action against the Debtors or the Liquidating Debtors for the purpose of directly or  
2 indirectly collecting, recovering, and receiving payment or recovery with respect to any  
3 Claim or demand against the Debtors or the Liquidating Debtors, except as provided by the  
4 Plan.

5 In addition to the foregoing, on the Effective Date, and except as otherwise  
6 provided by the Plan, all holders of Claims against or Interests in the Debtors and all other  
7 parties in interest in the Cases, including without limitation David A. Nilsen and all investors  
8 in Cedar Funding and/or the Fund, shall be permanently enjoined pursuant to Bankruptcy  
9 Code § 105 from commencing, conducting or continuing in any manner, directly or  
10 indirectly, claims, causes of action or other proceedings of any kind against any transferees,  
11 for avoidance and recovery of fraudulent transfers which are the same transfers that are  
12 sought to be avoided and recovered by the Trustee in the Avoidance Actions, or which  
13 otherwise constitute property of the Estates. A schedule identifying all enjoined persons  
14 presently known to the Proponents will be attached as an exhibit to the Confirmation Order  
15 in compliance with Bankruptcy Rule 3020(c).

16 **7.4 Limitation of Liability.**

17 The Trustee, the Liquidating Debtors, the Committee and each of its past and  
18 present members, the Post-Confirmation Committee and each of its past and present  
19 members, and their respective officers, directors, managers, employees, agents and  
20 representatives (collectively, the “Exculpated Parties”), will neither have nor incur any  
21 liability to any entity for any action taken in good faith or omitted to be taken in connection  
22 with or related to the Cases, the investigations of potential claims or the formulation,  
23 preparation, dissemination, implementation, confirmation, or consummation of the Plan, the  
24 Disclosure Statement, or any agreement created or entered into in connection with the Plan  
25 or incident to the Cases; provided that this limitation shall not affect or modify the rights of  
26 any holder of an Allowed Claim to enforce its rights under the Plan, nor shall the foregoing  
27 exonerate any of the Exculpated Parties from any liability that results from an act or  
28

1 omission to the extent such act or omission is determined by Final Order to have constituted  
2 gross negligence or willful misconduct.

3 In addition, notwithstanding any other provision of this Plan, no holder of a  
4 Claim or Interest, no other party in interest, none of their respective agents, employees,  
5 representatives, advisors, attorneys or affiliates, and no successors or assigns of the  
6 foregoing, shall have any right of action against any Exculpated Party for any act or omission  
7 in connection with, relating to, or arising out of the Cases or the consideration, formulation,  
8 preparation, implementation, confirmation or consummation of the Plan, the Disclosure  
9 Statement, or any transaction or document created or entered into, or any other act taken or  
10 omitted to be taken, in connection therewith, except for the liability of any entity that would  
11 otherwise result from any such act or omission to the extent that such act or omission is  
12 determined in a Final Order to have constituted gross negligence or willful misconduct. The  
13 Exculpated Parties do not include any Professionals.

14  
15 **ARTICLE VIII.**

16 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

17 Any prepetition executory contract or unexpired lease which has not expired  
18 by its own terms on or prior to the Effective Date, or which has not been assumed, assumed  
19 and assigned, or rejected with the approval of the Bankruptcy Court, is deemed rejected on  
20 the Effective Date. The entry of the Confirmation Order by the Bankruptcy Court constitutes  
21 approval of such rejections pursuant to Bankruptcy Code §§ 365(a) and 1123, effective as of  
22 the Effective Date.

23 Claims arising from the rejection of executory contracts or unexpired leases  
24 rejected as of the Effective Date pursuant to this Plan must be filed and served on the Plan  
25 Administrator within thirty (30) calendar days of the Effective Date or be forever barred.  
26 Unless otherwise ordered by the Bankruptcy Court prior to the Confirmation Date, all Claims  
27 arising from the rejection of executory contracts and unexpired leases will be treated as Class  
28 3 Claims.

## **ARTICLE IX.**

### **MODIFICATION OF PLAN**

The Trustee and Committee, jointly as the Plan Proponents, may modify the Plan prior to Confirmation if the Plan, as modified, meets the requirements of the Bankruptcy Code. Such modification shall be deemed accepted or rejected by a holder of a Claim that has previously accepted or rejected the Plan unless, within the time fixed by the Bankruptcy Court, such holder changes such holder's previous acceptance or rejection.

## ARTICLE X.

## **RETENTION OF JURISDICTION**

From and after the Confirmation Date, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, but not limited to, for the following purposes:

- (i) To determine the allowance and classification of Claims upon objection to such Claims, and to estimate Claims pursuant to section 502(c) of the Bankruptcy Code;
- (ii) To hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code §§ 346, 505 and 1146;
- (iii) To hear and determine requests for payment of Claims entitled to priority under section 507(a)(2) of the Bankruptcy Code;
- (iv) To hear and determine controversies and disputes regarding interpretation of this Plan or the Confirmation Order;
- (v) To enter and implement such orders as may be appropriate in the event confirmation is for any reason stayed, reversed, revoked, modified or vacated;
- (vi) To hear and determine any and all applications by Professionals for an award of pre-Effective Date Professional Fees, and to consider and rule upon the periodic and final fee applications of the Plan Administrator, Professionals, or other Professionals retained Post-Confirmation as provided in this Plan, and to resolve any disputes concerning payment of post-Effective Date fee requests;

(vii) To modify the Plan to the extent permissible under the Bankruptcy Code, and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and intent of the Plan;

(viii) To liquidate any Disputed Claims;

6 (ix) To interpret, administer and/or enforce the provisions of the Plan, and  
7 the injunction provided for in the Plan and to determine any and all disputes arising under or  
8 regarding interpretation of the Plan, or any other agreement, document or instrument  
9 contemplated by the Plan, including without limitation, all claims asserted against the Plan  
10 Administrator or against any Professionals retained by him, or claims asserted against the  
11 Trustee, the Committee and its members, and any Professionals retained by the Trustee or the  
12 Committee.

15 (xi) To hear and determine all contested matters or applications pending on  
16 the Effective Date, and any and all adversary proceedings, including Retained Claims and  
17 Defenses and Avoidance Actions, brought by the Trustee or Plan Administrator;

18 (xii) To approve any compromises and settlements and/or abandonments of  
19 claims against third parties, and/or the abandonment of any Estate Asset, which either the  
20 Plan Administrator in his sole discretion believes should be noticed to creditors, or which is  
21 the subject of an objection by the Post-Confirmation Committee.

22 (xiii) To enter a Final Decree and order closing the Cases.

## ARTICLE XI.

## **MISCELLANEOUS PROVISIONS**

## 11.1 Rules of Interpretation.

For purposes of this Plan: (a) each term will include the singular and the plural, and each pronoun, whether stated in the masculine, feminine or neutral gender, will

1 include the masculine, feminine and neutral gender; (b) captions and headings to articles and  
2 sections are inserted for convenience of reference only and are not intended to be a part of or  
3 affect the interpretation of this Plan; (c) the rules of construction of section 102 of the  
4 Bankruptcy Code will apply; and (d) any undefined term used in this Plan that is used in the  
5 Bankruptcy Code or the Bankruptcy Rules will have the meanings assigned to such term in  
6 the Bankruptcy Code or the Bankruptcy Rules.

7 **11.2 Computation of Time.**

8 In computing any period of time prescribed or allowed by this Plan, the  
9 provisions of Bankruptcy Rule 9006(a) shall apply.

10 **11.3 Governing Law.**

11 Except to the extent that the Bankruptcy Code or the Bankruptcy Rules are  
12 applicable, and subject to the provisions of any contract, instrument, release or other  
13 agreement entered into in connection with this Plan, the rights and obligations arising under  
14 this Plan will be governed by, and construed and enforced in accordance with, the laws of the  
15 State of California.

16 **11.4 Exhibits.**

17 All exhibits attached to the Plan or the Disclosure Statement are incorporated  
18 into the Plan by this reference. If any exhibits are amended, changed or corrected, the  
19 replacement exhibits will be filed with the Bankruptcy Court prior to the commencement of  
20 the hearing seeking confirmation of this Plan.

21 **11.5 Transfer Tax Exemption.**

22 The Debtors and the Liquidating Debtors shall have all of the rights and  
23 benefits conferred under section 1146(c) of the Bankruptcy Code under this Plan.

24 **11.6 Notices.**

25 All notices required or permitted to be made in accordance with this Plan shall  
26 be in writing and shall be delivered by first class mail, overnight courier service or via  
27 facsimile with electronic confirmation of receipt as follows:

1 To the Chapter 11 Trustee:

2 R. Todd Neilson  
3 LECG, LLC  
4 2049 Century Park East, Suite 2300  
5 Los Angeles, CA 90067  
6 (310) 300-2224  
7 (310) 556-0766 (Facsimile)  
8 Email: [tneilson@lecg.com](mailto:tneilson@lecg.com)

9 With a copy to:

10 Cecily A. Dumas  
11 Friedman Dumas & Springwater LLP  
12 33 New Montgomery St., Suite 290  
13 San Francisco, CA 94105  
14 (415) 834-3800  
15 (415) 834-1044 (Facsimile)  
16 [cdumas@friedumspring.com](mailto:cdumas@friedumspring.com)

17 To the Committee or the Post-Confirmation Committee:

18 Aron M. Oliner  
19 Duane Morris LLP  
20 One Market Plaza, Spear Tower  
21 Suite 2200  
22 San Francisco, CA 94105  
23 (415) 957-3104  
24 (415) 520-5308 (Facsimile)  
25 [roliner@duanemorris.com](mailto:roliner@duanemorris.com)

26 To the Plan Administrator:

27 Russell K. Burbank  
28 Burr Pilger Mayer, Inc.  
600 California Street, Suite 1300  
San Francisco, CA 94108  
(415) 677-4530  
(415) 288-6288 (Facsimile)  
[rburbank@bpmcpa.com](mailto:rburbank@bpmcpa.com)

29 **11.7 Successor and Assigns.**

30 All rights, benefits and obligations of any entity named or referred to in this  
31 Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators,  
32 successors and/or assigns of such entity.

1                   **11.8 Implementation.**

2                   Upon confirmation of the Plan, the Trustee and the Committee shall be  
3                   authorized to take all steps and execute all documents necessary to effectuate the provisions  
4                   of the Plan.

5                   **11.9 Corporate Actions.**

6                   By reason of the entry of the Confirmation Order, prior to, on or after the  
7                   Effective Date (as appropriate), all matters provided for under the Plan that would otherwise  
8                   require approval of the owners, shareholders, members, directors, managers or officers of  
9                   either of the Debtors shall be deemed to have occurred and be in effect prior to, on or after  
10                   the Effective Date (as appropriate), pursuant to the applicable general corporation or limited  
11                   liability law of the state in which each Debtor or Liquidating Debtor is organized or  
12                   incorporated, without any requirement of further action by the owners, shareholders,  
13                   members, directors, managers or officers of the Debtors.

14                   **11.10 Waiver of Fourteen (14) Day Stay.**

15                   The Proponents request as part of the Confirmation Order a waiver from the  
16                   Bankruptcy Court of the fourteen (14) day stay of Bankruptcy Rule 3020(e).

17                   DATED: February 14, 2011

R. Todd Neilson,  
Chapter 11 Trustee

20                   By: /s/ R. Todd Neilson  
21                   R. Todd Neilson

22                   DATED: February 14, 2011

23                   OFFICIAL COMMITTEE OF UNSECURED  
24                   CREDITORS

25                   By: /s/ Antonio Flores  
26                   Antonio Flores, Chair

1 DATED: February 14, 2011

FRIEDMAN DUMAS & SPRINGWATER LLP

2

3

4

By: /s/ Cecily A. Dumas

Cecily A. Dumas

Counsel for the Chapter 11 Trustee

5

DATED: February 14, 2011

DUANE MORRIS LLP

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By: /s/ Aron M. Oliner

Aron M. Oliner

Counsel for the Official Committee of  
Unsecured Creditors